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इस भाग में भिन्न पृष्ठ संख्या दी जाती है कि जिससे यह अलग संकलन के रूप में रखा जा सके।

Separate paging is given to this Part in order that it may be filed
as a separate compilation.

LOK SABHA

The following Bill was introduced in Lok Sabha on 7th September, 1990:—

BILL NO. 156 OF 1990

A Bill further to amend the Constitution of India.

Be it enacted by Parliament in the Forty-first Year of the Republic of India as follows:—

1. (1) This Act may be called the Constitution (Seventy-fourth Amendment) Act, 1990.

Short title
and com-
mence-
ment.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. After Part VIII of the Constitution, the following Part shall be inserted, namely:—

Insertion
of new
Part IX.

PART IX

THE LOCAL AUTHORITIES

CHAPTER I.—GENERAL

243. In this Part, unless the context otherwise requires,—

Defini-
tions.

(a) "Committee" means a Committee constituted under article 243F;

(b) "Gram Sabha" means a body consisting of persons registered in the electoral rolls relating to a village comprised within the area of a Panchayat at the village level;

(c) "Local Authority" means an institution of self-government constituted under article 243B or, as the case may be, under article 243D;

(d) "Municipal area" means the territorial area of a Municipality;

(e) "Municipality" means an institution (by whatever name called) of self-government constituted under article 243D;

(f) "Panchayat" means an institution (by whatever name called) of self-government constituted under article 243B, for the rural areas;

(g) "Panchayat area" means the territorial area of a Panchayat;

(h) "population" means the population as ascertained at the last preceding census of which the relevant figures have been published;

(i) "village" means a village specified by the Governor by public notification to be a village for the purposes of this Part and includes a group of villages so specified.

CHAPTER II.—THE PANCHAYATS

Powers of
a Gram
Sabha.

243A. A Gram Sabha may exercise such powers at the village level as the Legislature of a State may, by law, provide.

Constitu-
tion of
Pancha-
yats.

243B. (1) There shall be constituted in every State Panchayats at the village level in accordance with the provisions of this Part.

(2) The Legislature of a State may, by law, provide for the constitution of Panchayats at other level or levels in accordance with the provisions of this Part.

Composi-
tion of
Pancha-
yats.

243C. (1) Subject to the provisions of this Part, the Legislature of a State may, by law, make provisions with respect to the composition of Panchayats.

(2) All the seats in a Panchayat at the village level and not less than fifty per cent. of the seats in a Panchayat at any other level, if any, shall be filled by persons chosen by direct election from territorial constituencies in the Panchayat area.

(3) The Legislature of a State may, by law, provide for the representation, in such manner and subject to such conditions as may be specified in such law, of the Chairpersons of the Panchayats at the village level or of the Panchayats, if any, at any other level in the Panchayats at the immediately next higher level.

(4) The Chairperson of a Panchayat shall be chosen by election in such manner as the Legislature of a State may, by law, provide.

CHAPTER III.—THE MUNICIPALITIES

243D. (1) There shall be constituted in every State—

(a) a Nagar Panchayat (by whatever name called) for a transitional area, that is to say, an area in transition from a rural area to an urban area;

(b) a Municipal Council for a smaller urban area; and

(c) a Municipal Corporation for a larger urban area,

in accordance with the provisions of this Part.

(2) In this article, “a transitional area”, “a smaller urban area” and “a larger urban area” means such area as the Governor may, having regard to the population of the area, the density of the population therein, the revenue generated for local administration, the percentage of employment in non-agricultural activities, the economic importance or such other factors as he may deem fit, specify by public notification for the purposes of this Part.

243E. (1) Subject to the provisions of this Part, the Legislature of a State may, by law, make provision with respect to the composition of Municipalities.

(2) Save as provided in clause (3), all the seats in a Municipality shall be filled by persons chosen by direct election from territorial constituencies in the Municipal area and, for this purpose, each Municipal area shall be divided into territorial constituencies to be known as wards.

(3) The Legislature of a State may, by law, provide for the representation, in a Municipal Corporation, of the Chairpersons of Committees constituted at the ward or other level or levels under article 243F in such manner and subject to such conditions as may be specified in such law.

(4) The Chairperson of a Municipality shall be chosen by election in such manner as the Legislature of a State may, by law, provide.

243F. The Legislature of a State may, by law, provide for the constitution of Committees at the ward level or other level or levels within the territorial area of a Municipal Corporation and such law may contain provisions with respect to—

(a) the composition and the territorial area of such Committees;

(b) the manner in which the seats in such Committees shall be filled;

(c) the powers and functions of the Municipal Corporation which may be delegated to such Committees;

(d) the manner in which the Chairpersons of such Committees shall be elected.

Constitu-
tion of
Municipalities.

Composi-
tion of
Municipalities.

Constitu-
tion and
composi-
tion of
Commit-
tees at
ward
level and
other
levels.

CHAPTER IV.—MISCELLANEOUS

Reserva-
tion of
seats.

243G. (1) Seats shall be reserved for the Scheduled Castes and the Scheduled Tribes in every Panchayat and Municipality and the number of seats so reserved shall bear, as nearly as may be, the same proportion to the total number of seats to be filled by election in that Panchayat or Municipality, as the population of the Scheduled Castes in that Panchayat area or Municipal area, or of the Scheduled Tribes in that Panchayat area or Municipal area bears to the total population of that area.

(2) Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by election in every Panchayat or Municipality, shall be reserved for women and allotted by rotation to different constituencies in a Panchayat or Municipality.

(3) The reservation of seats under clause (1) shall cease to have effect on the expiration of the period specified in article 334.

(4) Nothing in this Part shall prevent the Legislature of a State from making any provision for reservation of seats in any Panchayat or Municipality in favour of any backward class of citizens.

Powers,
authority,
etc.,
of Local
Autho-
rities.

243H. Subject to the provisions of this Constitution, the Legislature of a State may, by law, endow—

(a) the Local Authorities with such powers and authority (including the power to levy, collect and appropriate taxes, duties, tolls and fees in accordance with such procedures and limits as may be specified in such law) as may be necessary to enable them to function as institutions of self-government.

(b) the Committees constituted under article 243F with such powers and authority as may be necessary to enable them to carry out their responsibilities.

Duration
of the
Local
Autho-
rities.

243-I. (1) Every Local Authority, unless dissolved under any law for the time being in force, shall continue for five years from the date appointed for its first meeting and no longer and the expiration of the said period of five years shall operate as a dissolution of that Local Authority.

(2) Where a Local Authority is dissolved before the expiration of its duration, an election to constitute the Local Authority shall be completed, as soon as may be, and in any case, before the expiration of a period of six months from the date of such dissolution:

Provided that if the remainder of the period for which the dissolved Local Authority would have continued is less than six months, it shall not be necessary to hold any election under this clause for constituting the Local Authority.

(3) The Local Authority constituted upon the dissolution of a Local Authority before the expiration of its duration shall continue only for the remainder of the period for which the dissolved Local Authority would have continued under clause (1) had it not been so dissolved.

243J. (1) There shall be constituted in every State a Finance Commission, as soon as may be within one year from the commencement of the Constitution (Seventy-fourth Amendment) Act, 1990, and thereafter at the expiration of every fifth year, to review the financial position of the Local Authorities and to make recommendations to the Government of the State as to—

Constitu-
tion of
Finance
Commis-
sion to
review
financial
position.

(a) the principles which should govern—

(i) the distribution between the State and the Local Authorities of the net proceeds of the taxes, duties, tolls and fees leviable by the State, which may be divided between them under this Part and the allocation between the Local Authorities of their respective shares of such proceeds;

(ii) the determination of the taxes, duties, tolls and fees which may be assigned to, or appropriated by, the Local Authorities;

(iii) the grants-in-aid to the Local Authorities from the Consolidated Fund of the State;

(b) any other matter referred to the Finance Commission by the Government of the State in the interest of sound finance of the Local Authorities.

(2) The Legislature of a State may, by law, provide for the composition of the Commission, the qualifications which shall be requisite for appointment as members thereof and the manner in which they shall be selected.

(3) The Commission shall determine their procedure and shall have such powers in the performance of their functions as the Legislature of the State may, by law, confer on them.

(4) The recommendations made by the Finance Commission shall be laid, as soon as may be after they are made, by the Government of the State before the Legislature of the State together with an explanatory memorandum as to the action taken thereon.

243K. Subject to the provisions of his Constitution, the Legislature of a State may, by law, make provision with respect to all matters relating to, or in connection with, elections to the Local Authorities.

Powers of
Legisla-
ture of a
State to
make
provi-
sions with
respect
to elec-
tions to
Local
Autho-
rities.

243L. (1) The provisions of this Part shall apply to the Union territories and shall, in their application to a Union territory, have effect as if the references to the Governor of a State were references to the Administrator of the Union territory appointed under article 239 and references to the Legislature or the Legislative Assembly of a State were references, in relation to a Union territory having a Legislative Assembly, to that Legislative Assembly.

Applica-
tion to
Union
terri-
tories.

(2) Notwithstanding anything in clause (1), the President may, by public notification, direct that the provisions of this Part shall not apply to any Union territory or any part thereof or shall apply to any Union territory or part thereof subject to such exceptions and modifications as he may specify in the notification.

Part not
to apply
to certain
areas.

243M. (1) Nothing in this Part shall apply to the Scheduled Areas referred to in clause (1), and the tribal areas referred to in clause (2), of article 244.

(2) Nothing in this Part, in so far as it relates to Panchayats, shall apply to—

(a) the States of Nagaland, Meghalaya and Mizoram;

(b) the Hill Areas in the State of Manipur for which District Councils exist, and the Hill Areas of the District of Darjeeling in the State of West Bengal for which the Darjeeling Gorkha Hill Council exists, under any law for the time being in force.

(3) Notwithstanding anything in this Constitution—

(a) the Legislature of a State referred to in sub-clause (a) of clause (2) may, by law, extend this Part in so far as it relates to Panchayats to that State, except the areas, if any, referred to in clause (1), if the Legislative Assembly of that State passes a resolution to that effect by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting;

(b) Parliament may, by law, extend the provisions of this Part to the Scheduled Areas and the tribal areas referred to in clause (1) subject to such exceptions and modifications as may be specified in such law, and no such law shall be deemed to be an amendment of this Constitution for the purposes of article 368.

Continu-
ance of
existing
laws and
Local
Autho-
rities.

243N. Notwithstanding anything in this Part, any provision of any law relating to Local Authorities in force in a State immediately before the commencement of the Constitution (Seventy-fourth Amendment) Act, 1990, which is inconsistent with the provisions of this Part, shall continue to be in force until the expiration of one year from such commencement or until the expiration of the longest duration of the Panchayats, at any level, or any Municipality, as the case may be, existing in that State immediately before such commencement, whichever is later:

Provided that all the Local Authorities existing immediately before such commencement shall continue till the expiration of their duration, unless sooner dissolved by a resolution passed to that effect by the Legislative Assembly of that State or, in the case of a State having a Legislative Council, by each House of the Legislature of that State.

Disqualifi-
cations
for mem-
bership.

243-O. (1) A person shall be disqualified for being chosen as, and for being, a member of a Local Authority or a Committee—

(a) if he holds any office of profit under the Government of India or the Government of any State, or a Local Authority or a

Committee in a State, other than an office declared by the Legislature of the State, by law, not to disqualify its holder;

(b) if he is of unsound mind and stands so declared by a competent court;

(c) if he is an undischarged insolvent;

(d) if he is not a citizen of India, or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgement of allegiance or adherence to a foreign State;

(e) if he is so disqualified by or under any law for the time being in force for the purposes of elections to the Legislature of the State concerned;

(f) if he is so disqualified by or under any law made by the Legislature of the State.

(2) If any question arises as to whether a member of a Local Authority or a Committee has become subject to any of the disqualifications mentioned in clause (1), the question shall be referred for the decision of the Governor and his decision shall be final.

243P. Notwithstanding anything in this Constitution,—

(a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under article 243K, shall not be called in question in any court;

(b) no election to any Local Authority or Committee shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the Legislature of a State.

Bar to
inter-
ference
by courts
in elec-
toral
matters.

STATEMENT OF OBJECTS AND REASONS

Though Local Authorities, namely, Panchayati Raj Institutions and urban local bodies have been in existence in the country for a long time, it has been observed that these institutions have not been able to acquire the status and dignity of viable and responsive people's bodies due to a variety of reasons including absence of regular elections, prolonged supersessions, inadequate representation of weaker sections like the Scheduled Castes and the Scheduled Tribes and women, insufficient devolution of powers and lack of financial resources.

2. Article 40 of the Constitution, which enshrines one of the Directive Principles of State Policy, lays down that the State shall take steps to organise village Panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government. While this Directive Principle applies to village Panchayats, it is felt that urban local bodies should also be organised and endowed with such powers and authority as are necessary to enable them to function as units of self-government.

3. In the light of the experience in the last forty years and in view of the shortcomings which have been noticed, it has been recognised that there is a need to enshrine in the Constitution certain basic and essential features of the Local Authorities to impart certainty, continuity and strength to them.

4. Accordingly, it is proposed to add a new Part relating to the Local Authorities in the Constitution to provide for, among other things, "gram sabha" in each village; constitution of Panchayats at village and other level or levels; direct elections to all seats in Panchayats at the village level and to not less than fifty per cent. of seats in Panchayats at other levels; constitution of urban local bodies such as Nagar Panchayats for such transitional areas, Municipal Councils for such smaller urban areas and Municipal Corporations for such larger urban areas as may be specified by the Governor by public notification; direct elections to the urban local bodies; constitution of Committees at the ward level or other levels in Municipal Corporations; representation of Chairpersons of such Committees in Municipal Corporations; reservation of seats for the Scheduled Castes and the Scheduled Tribes in proportion to their population; reservation of not less than one-third of the seats for women; conferring powers and authority (including the power to levy, collect and appropriate taxes, duties, tolls and fees) on Local Authorities; fixing tenure

of five years for Local Authorities and holding elections within a period of six months in the event of supersession of any such Authority; setting up of Finance Commission within one year of this amendment and thereafter every five years to review the financial position of Local Authorities; powers of State Legislatures to make provisions with respect to elections to Local Authorities; application of the provisions of the said Part to Union territories; excluding certain States and areas from the application of the provisions of the said Part; disqualifications for membership of Local Authorities and barring interference by courts in electoral matters relating to Local Authorities.

3. The Bill seeks to achieve the aforesaid objectives.

NEW DELHI;

DINESH GOSWAMI

The 4th September, 1990.

FINANCIAL MEMORANDUM

Clause 2 of the Bill seeks to insert a new Part IX in the Constitution consisting of articles 243 to 243P.

2. Article 243H of the Bill envisages that the Legislature of a State may confer such powers and authority (including the power to levy, collect and appropriate taxes, duties, tolls and fees) on the Local Authorities as may be required to enable them to function as institutions of self-government. Article 243J requires the constitution of the Finance Commission by the States to review the financial position of Local Authorities and recommend principles governing distribution of taxes and grants-in-aid. The strengthening of Local Authorities as envisaged may call for the strengthening of the administrative capabilities and training requirements of these Authorities in the States. As article 243L of the Bill makes its provisions applicable to the Union territories, the expenditure which may have to be incurred in relation to the Union territories, will have to be met by the Government of India out of its Consolidated Fund. It is, however, difficult to estimate the annual recurring expenditure as it will depend on the powers and authority conferred on these institutions.

3. The Bill, when enacted, will not involve any other recurring or non-recurring expenditure.

K. C. RASTOGI,
Additional Secretary.